



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

June 17, 2015

Ms. Pamela Parra
Political Reform Audit Manager
Franchise Tax Board
P.O. Box 651
Sacramento, CA 95812-0651

Re: Your Request for Informal Assistance
Our File No. I-15-041

Dear Ms. Parra:

This letter responds to your request for advice regarding the campaign and audit provisions of the Political Reform Act (the “Act”).¹ Because your letter does not request advice with regard to a specific committee or set of facts, we have treated your request as one for informal assistance.²

QUESTIONS AND CONCLUSIONS

1. If an individual files a candidate intention statement (Form 501), forms a controlled committee that receives a contribution or makes an expenditure, but does not appear on the ballot for the specific elective office for which he or she intended to seek nomination or election, does this individual meet the definition of “candidate” under Section 82007?

Under Section 85200, prior to the solicitation or receipt of any contribution or loan, an individual who intends to be a candidate for an elective state office must file with the Secretary of State, and an individual who intends to be a candidate for other elective office must file with their local filing officer, under penalty of perjury, an original statement of intention to be a candidate for that specific office.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

Section 82007 defines a candidate as follows:

“‘Candidate’ means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. . . . An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214.”

Yes. If an individual files a candidate intention statement, forms a controlled committee that receives a contribution or makes an expenditure, but does not appear on the ballot for the specific elective office for which he or she intended to seek nomination or election, this individual still meets the definition of “candidate” under Section 82007. The individual has received a contribution or made an expenditure with a view to bringing about his or her nomination or election to elective office.

2. If an individual who has not terminated his or her filing obligations as a candidate for a prior election files a candidate intention statement and forms a new candidate-controlled committee for a different office but is not listed on the ballot for election to that office, does this individual retain the status of “candidate” under Section 82007?

Yes, this individual retains the status of candidate under Section 82007. An individual retains his or her status as a candidate until that status is terminated by the individual’s leaving elective office and terminating their controlled committee(s). (Section 84214 and Regulation 18404.)

3. Is an individual, described above, who files a candidate intention statement, forms a controlled committee that receives contributions or makes expenditures, but who does not appear on the ballot for the specific elective office for which he or she intended to seek nomination or election, subject to mandatory audit under Section 90001, if the committee meets the monetary thresholds specified in the statute?

Section 90000 provides that the Franchise Tax Board shall make audits and field investigations with respect to campaign reports and statements filed with the Secretary of State under Chapters 4-6 of the Act, and of local candidates and their controlled committees that are selected for random audit (except that the Commission, not the Franchise Tax Board conducts audits and field investigations of candidates for Controller and member of the Board of Equalization as specified in Section 90006).

Section 90001 concerning “Mandatory Audits and Investigations” states:

“Audits and investigations shall be made pursuant to Section 90000 with respect to the reports and statements of:

...

(b) Each statewide, Supreme Court, court of appeal, or Board of Equalization candidate *in a direct primary or general election* for whom it is determined that twenty-five thousand dollars (\$25,000) or more in contributions have been raised or twenty-five thousand dollars (\$25,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or whose participation in the direct primary or general election is primarily in support of his or her candidacy. Each statewide candidate whose contributions and expenditures are less than twenty-five thousand dollars (\$25,000) shall be subject to an audit on a random basis of 10 percent of the number of such candidates.

(c) Each candidate for the Legislature or superior court judge *in a direct primary or general election* shall be subject to audit by random selection if it is determined that fifteen thousand dollars (\$15,000) or more in contributions have been received or fifteen thousand dollars (\$15,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by a candidate or primarily supporting his or her candidacy. Random selection shall be made of 25 percent of the Senate districts, 25 percent of the Assembly districts and 25 percent of the judicial offices contested in an election year.

(d) Each candidate for the Legislature *in a special primary or special runoff election* for whom it is determined that fifteen thousand dollars (\$15,000) or more in contributions have been raised or fifteen thousand dollars (\$15,000) or more in expenditures have been made, whether by the candidate or by a committee or committees controlled by the candidate or primarily supporting his or her candidacy.

(e) Each controlled committee of any candidate who is being audited pursuant to subdivision (b), (c), or (d).” (Emphasis added.)

In addition to the mandatory audits and investigations authorized by Section 90001, Section 90003 provides that the Franchise Tax Board and the Commission may make discretionary investigations and audits with respect to any reports or statements required by the Act.

For the past several years, the FPPC’s direction to the Franchise Tax Board has been that a committee of a candidate who has filed a declaration of intent to run for a particular office, has formed a committee for that office, and has raised or spent the threshold amount of money listed above, but did not appear on the ballot for that office, is subject to mandatory audit. In prior years, however, the policy of the Franchise Tax Board and the FPPC has varied as to whether the committees of such candidates were subject to mandatory audit under Section 90001. For this reason, as we discussed by telephone, you seek advice on this point.

The language in the mandatory audit Section of 90001 applies to a candidate for a particular office “in a direct primary or general election” or “in a special primary or special runoff election.” We interpret this language of the mandatory audit provisions to include a candidate who files a declaration of intent for a particular office, forms a committee for that office, and receives contributions or makes expenditures of \$15,000 or \$25,000 as specified in the statute, even if the candidate ultimately does not end up on the ballot for that office.

Quite a number of candidates file a declaration of intent to run for an office, form a committee for the office, and raise campaign contributions and make expenditures, but do not end up actually running for that office. Many candidates move their campaign funds forward in this way. A recent audit and enforcement case found substantial personal use of campaign funds violations in two committees of a candidate who did not appear on the ballot, illustrating the importance of having funds in these committees subject to mandatory audit. (*In the matter of Dean Florez, Dean Florez for Lt. Governor 2010, and Dean Florez for State Controller 2014*, FPPC No. 12/213.)

Consequently, we conclude that an individual who files a candidate intention statement for an office, forms a controlled committee for that office, and receives contributions or makes expenditures meeting the audit thresholds, is subject to mandatory audit under Section 90001, even if they do not ultimately appear on the ballot for that office.

4. If the aforementioned individual meets the definition of “candidate” are expenditures reported by the candidate as civic donations, contributions, or administrative expenses considered “expenditures” for purposes of determining whether the candidate has met the mandatory audit thresholds specified in 90001?

When examining the expenditures of candidates who were not on the ballot to see if they met the mandatory audit thresholds, the Franchise Tax Board has been counting only campaign-related expenditures. They included expenditures such as for consultants and legal fees, but backed out expenditures a candidate’s committee made that were not campaign related such as civic donations, contributions to other candidates, and administrative expenses. You are requesting advice as to which expenditures count for the purposes of determining whether a candidate has met the mandatory audit thresholds.

All the listed payments by candidates’ committees you have described come within the definition of expenditure in Section 82025 and Regulation 18225. Therefore, as a general matter, all the expenditures described above, not only those that are considered to be campaign-related, should be counted to determine whether a candidate’s committee has met the mandatory audit thresholds of Section 90001.

If you have any other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl